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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/589,306	06/07/2000	Anthony Cyril Lowe	YO998-267X	8945

7590 04/23/2004

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EXAMINER	
PARKER, KENNETH	

ART UNIT	PAPER NUMBER
2871	

DATE MAILED: 04/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/589,306	LOWE, ANTHONY CYRIL	
	Examiner	Art Unit	
	Kenneth A Parker	2871	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 September 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *17-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *17-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

This application repeats a substantial portion of prior Application No. 09154019, filed 9/1998, and adds and claims additional disclosure not presented in the prior application. Since this application names an inventor or inventors named in the prior application, it may constitute a continuation-in-part of the prior application. Should applicant desire to obtain the benefit of the filing date of the prior application, attention is directed to 35 U.S.C. 120 and 37 CFR 1.78.

Claim Rejections - 35 USC § 102

Claims 17 -20 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Neijzen, U.S. Patent # 5,929,956.

Claim 17-19 is written to, and Neijzen et al discloses (fig 3a-3c) a liquid crystal display with an incident and opposite side 14 and 9, diffusing liquid crystal 5, a and reflecting means 15 between the first and second substrates which reflects light larger than a given angle and passes light below a given angle (see abstract), and an absorber 10 on the other side. Structured and multilayer embodiments are shown (illustrated in figs 4 and 6). Therefore, these claims 17-19 are anticipated by this reference.

Claim 20 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Neijzen, WO 98/23996.

Claim 20 written to, and Neijzen et al discloses (fig 3a-3c) a liquid crystal display with an incident and opposite side 14 and 9, diffusing liquid crystal 5, a and reflecting means 15 between the first and second substrates which reflects light larger than a given angle and passes light below a given angle (see abstract), and an absorber 10 on the other side. An angle

dependent diffuser (illustrated in figs 4 and 6). Therefore, this claim is anticipated by this reference.

Please note that the diffuser has not been given the date of the parent application, as the angle dependent diffusing layer was not present in the parent case, and as no angle dependent diffusing was described as one of ordinary skill would not have determined that applicant was in possession of the combination with that feature. In fact, the parent application described the angle dependent reflector as having "specularly reflecting" surfaces- clearly not diffusing, and even more particularly not angularly dependently defusing.

Applicants original application only disclosed mirror like reflectors, and claimed and discussed the reflectors having angular dependent reflection. Diffuse reflecting reflectors are a specific type which were not disclosed, and appear not likely to be considered as meeting the written description requirement, but further, the claims now being angular dependent diffusers- and clearly none of the previous embodiments disclosed a diffusion angular dependence.

Affidavit/Declaration under 1.131

The declaration filed on 6/14/02 under 37 CFR 1.131 has been considered but is ineffective to overcome the references.

1) The evidence submitted is insufficient to establish a conception of the the invention in this country or a NAFTA or WTO member country prior to the effective date of the reference.

The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the **Neijzen, U.S. Patent # 5,929,956** reference, the affidavit or declaration and exhibits fail to clearly explain which facts or data applicant is relying on to show completion of the invention prior to the particular date. Specifically, the affidavit fails to set forth the facts

by which applicant seeks to show conception, in that applicant has not indicated what it is that the invention disclosure is- if it was done before the date of the reference- or if it was done after the date of the reference describing an early done experiment. If the invention disclosures were submitted and dated before the date of the reference, then the affidavit should set forth this fact. For example, in the beginning of element #3 of the affidavit, add the statement " Invention disclosures were submitted and dated before the filing date of Neijzen et al". If the invention disclosures were made after that date, but are somehow being relied upon to show evidence the conception, then applicant should say how those disclosures should be construed as evidencing conception before the date of the reference. Without knowing what the documents are (whether they were written around the time of the conception or years after), we can't know what exactly the documents mean. Therefore we can't know what it was that was conceived of before the date of the reference. Applicant's statement that the "claimed device" was conceived of before the date of the reference is also insufficient, as what the applicant understands the claims to mean what applicant understands the claimed device to imply cannot be determined.

2) The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the reference **Neijzen, U.S. Patent # 5,929,956.** No facts or evidence there of were presented in the affidavit indicating that the device was made and worked for its intended purpose before the date of the reference.

3) The evidence submitted is insufficient to establish diligence from a date prior to the date of the **Neijzen # 5,929,956** reference to either a constructive reduction to practice or an actual reduction to practice. No facts establishing diligence or evidence thereof was presented in the affidavit.

3) The reference **Neijzen, U.S. Patent # 5,929,956** is a U.S. patent or U.S. patent application publication of a pending or patented application that claims the rejected invention. An affidavit or declaration is inappropriate under 37 CFR 1.131(a) when the reference is claiming the same patentable invention, see MPEP § 2306. If the reference and this application are not commonly owned, the reference can only be overcome by establishing priority of invention through interference proceedings. See MPEP Chapter 2300 for information on initiating interference proceedings. If the reference and this application are commonly owned, the patent may be disqualified as prior art by an affidavit or declaration under 37CFR 1.130. See MPEP § 718.

4) The reference **Neijzen, WO 98/23996** is a statutory bar under 35 U.S.C. 102(b) and thus cannot be overcome by an affidavit or declaration under 37 CFR 1.131 (claim 20 only).

Interference

It is noted that applicant has copied a claim of prior US Patent #5,929,956. As applicant is claiming the same invention as a patent which has an earlier effective United States filing date by greater than 3 months and as applicant has not submitted the items required by 37 CFR 1.608(a) or (b) in that no corroborating affidavit was provided, the application has been rejected under 35 _U.S.C. 102(e)/103. Applicant is advised that the patent cannot be overcome by an affidavit or declaration under 37 CFR 1.131 but only through interference proceedings. See MPEP § 2308 and note that advised that an affidavit under 37 _CFR 1.608(b) or evidence and an explanation under 37 CFR 1.608(b), as appropriate, must be submitted.

Response to Arguments

Applicant's arguments filed have been fully considered but they are not persuasive.

Applicant's arguments regarding the issue involving the term diffuser are not agreed with, as the Neijizen reference itself and the instant application both provide evidence of the meaning of the terms. Both Neijizen and the instant application describe applicants angle-dependent reflector as reflectors (element 21 in Neijizen and 56 of the instant application), and Neijizen describes angle-dependent diffusers 17 as diffusers. In fact the instant application described the element as being specular reflecting- to now call that same element "diffusing" is clearly contradicting the original terms used, and describing a different element. Further, element is decribed as being an angle-dependent diffuser- something not in any way described in the specification. The only reason that no 112 first paragraph is not applied is because one of ordinary skill can make the device by referring to the specification of Neijizen.

Applicants argument that the affidavit is sufficient in evidencing conception and are not agreed with. Applicant in fact argues that the disclosures describe something done before that date of invention, implying that the invention disclosure were made before the reference dates, the affidavit doesn't clearly state this, and even the arguments don't directly state this. If the drawing was done afterwards, it would need to be clear what was disclosed and or discussed earlier, as a substantially later paraphrasing could change meaning and may not give a correct picture of what was done earlier. So as we don't know what this document is, we can't evaluate what it implies in regard to what was conceived of prior to the date of the reference. Further, there is absolutely no evidence of reduction to practice- of the invention actually having

been made and how it worked so that a determination that a reduction to practice occurred. No activites at all are presented to establish diligence.

Regarding the affidavit being ineffective because the claims are not patentably distinct from the reference, applicant make an unrelated argument regarding something about common ownership.

Applicants argument that the affidavit of Lowe also serves as an affidavit under 608 is manifestly lacking, as the examiner indicated that a CORROBORATING affidavit was lacking.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Parker whose telephone number is **(703) 305-6202.** The fax phone number for this Group is **(703) 308-7722.** Any inquiry of a general nature or relating to the status of this application or preceding should be directed to the Group receptionist whose telephone number is (703) 308-0956.

April 21, 2004

KENNETH ALLEN PARKER
PRIMARY PATENT EXAMINER
GAU 2871